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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

NICHOLAS LOPEZ,

Plaintiff and Appellant,

v.

POMONA VALLEY HOSPITAL
MEDICAL CENTER et al.,

Defendants and Respondent.

B204463

(Los Angeles County
Super. Ct. No. KC047453)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Pete J. Meeka, Judge. Affirmed.

Girardi and Keese and John A. Girardi for Plaintiff and Appellant.

Taylor Blessey LLP and Barbara M. Reardon for Defendant and
Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Nicholas Lopez brought a suit for negligence against respondent Debra Turull, M.D. after the death of his wife, Anna Lopez, and two infant children.¹

A. Background Facts

Certain facts are not in dispute. Mrs. Lopez was pregnant with twins. Dr. Turull was Mrs. Lopez's obstetrician.² On April 11, 2005, shortly before noon, one day before she was scheduled to deliver, Mrs. Lopez was admitted to the Pomona Valley Hospital Medical Center (the Hospital), complaining of diarrhea and vomiting. She did not complain of shortness of breath.³ Dr. Turull ordered certain treatment, including oxygen, antibiotics, Pitocin to induce labor and intravenous fluids. Dr. Turull did not examine Mrs. Lopez's lungs.

Several hours later, at approximately 5:30 p.m., Dr. Turull learned that Mrs. Lopez was suffering severe respiratory distress. Dr. Turull and other physicians undertook efforts to restore Mrs. Lopez's respiratory function and deliver the twins, but their efforts were unsuccessful. Mrs. Lopez died, as did the infants.⁴

¹ Other defendants settled or were dismissed before trial.

² Mrs. Lopez was also being seen by the San Gabriel Valley Perinatal Medical Group, Inc.

³ The parties disputed whether she also complained of coughing or other respiratory symptoms. It was undisputed that a few weeks earlier, Mrs. Lopez had been treated for bronchitis; that Dr. Turull prescribed cough medicine on the day she was hospitalized; and that at approximately 3:15 p.m., a respiratory therapist treated her with medication intended to open her airways.

⁴ One, a boy, was stillborn. The other, a girl, died a few days later.

B. Issues and Evidence at Trial

There was no dispute that during her pregnancy, Mrs. Lopez suffered from preeclampsia (also called pregnancy-induced hypertension), a potentially life-threatening condition caused by the pregnancy. Treatment for preeclampsia entails keeping the mother's symptoms under control until the fetus is sufficiently developed to survive on its own. The immediate cause of Mrs. Lopez's death was pulmonary edema -- Mrs. Lopez's lungs filled with fluid and ceased functioning. Appellant's theory was that the pulmonary condition which led to Mrs. Lopez's death was in its beginning stages at the time of admission, and that had Dr. Turull detected it in time, proper treatment could have prevented it from progressing. The defense theory was that the condition, which its experts referred to as acute respiratory distress syndrome or "ARDS," is a rare complication of preeclampsia. The defense contended that the condition came on suddenly, hours after Dr. Turull examined Mrs. Lopez, and that once the process began, Mrs. Lopez's prognosis was poor, no matter what medical treatment was attempted.

In litigating the primary issues -- whether the pulmonary condition was present when Dr. Turull examined Mrs. Lopez at noon and whether Dr. Turull was negligent in failing to detect it -- the parties presented evidence of Mrs. Lopez's blood oxygen saturation levels throughout the day. A notation on Mrs. Lopez's admission records and the twins' fetal monitor strips showed an oxygen saturation level of 84 percent.⁵ This was significantly below normal, which would be closer

⁵ Fetal monitors are devices that monitor the heartbeat of infants during labor, as well as the frequency and intensity of contractions. Fetal monitor strips are the printouts from the devices. Although the fetal monitor strips automatically record only the fetal heart rate and the contractions, medical personnel often write the mother's vital signs -- measured by other medical devices -- on the fetal monitor strips.

The defense disputed when the reading of 84 percent was taken and also presented evidence that the reading may have been inaccurate.

to 100 percent. Other readings taken at later times showed higher levels, including a measurement of 98 percent taken at 3:40 p.m.

Dr. Turull testified that when she examined Mrs. Lopez at noontime, she was not aware of the 84 percent oxygen saturation measurement. She was aware of the twins' heart rates, which were being continuously measured by a fetal monitor. At approximately 3:30 p.m., Dr. Turull called the Hospital to check on Mrs. Lopez's condition and was informed the patient had had a respiratory treatment and that her condition was satisfactory. At 5:30 p.m., Dr. Turull received a second call, which informed her that Mrs. Lopez was experiencing serious respiratory problems.

Tien Nguyen, a respiratory therapist, testified that at approximately 3:15 p.m., he treated Mrs. Lopez with oxygen and inhaled medication, a treatment designed to open up her airways but which would have had no impact on pulmonary edema. Mrs. Lopez was not receiving supplemental oxygen prior to the treatment or after it ended. Nguyen listened to Mrs. Lopez's lungs and did not hear anything to indicate the presence of fluid. Mrs. Lopez's heart rate, breathing rate and pulse rate were approximately the same before and after the respiratory treatment, all within normal parameters. She did not appear to be in great distress, but she did not have strong air movement, which did not surprise Nguyen due to her weight and pregnancy.

Appellant's pulmonary expert, Dr. Randolph Noble, testified that an oxygen saturation level of less than 94 percent in a pregnant woman created a risk to both mother and child. He stated that Mrs. Lopez's alleged 84 percent oxygen saturation level at the time of admission signaled the beginnings of pulmonary edema and should have triggered a call for a pulmonary consultation and removal to intensive care. In his opinion, had proper procedures been followed, Mrs. Lopez's pulmonary edema would have been diagnosed at a much earlier time and

could have been given appropriate treatment, including intubation, which would have kept oxygen saturation levels at 94 percent or above.⁶ Dr. Noble also expressed the opinion that the intravenous fluids infused as the result of Dr. Turull's order contributed to the excess fluid in Mrs. Lopez's lungs. On cross-examination, Dr. Noble testified that he was aware that medical records indicated Mrs. Lopez's oxygen saturation level was 92 percent at 1:30 p.m. and 98 percent at 3:40 p.m. These readings did not alter Dr. Noble's opinion concerning when Mrs. Lopez began to develop pulmonary edema, because he believed she was receiving oxygen, which artificially inflated the readings.⁷ He agreed with defense counsel that an improved oxygen saturation level not traceable to treatment with oxygen was inconsistent with a progressive pulmonary condition.

The defense pulmonary expert, Dr. Andrew Wachtel, testified that acute respiratory distress syndrome is a rare complication of preeclampsia and that once it develops, the prognosis for recovery is poor. He further testified that the 3:40 p.m. oxygen saturation reading of 98 percent indicated that Mrs. Lopez could not have been suffering pulmonary edema at the time of admission. He opined that Mrs. Lopez's lungs began filling with fluid sometime between 4:30 and 5:30 p.m. and that the condition progressed rapidly. Accordingly, an examination of Mrs. Lopez's lungs at noon, would not have detected edema or prevented her death.

⁶ Dr. Noble testified that he would defer to the obstetrician as to whether immediate delivery was advisable. Dr. Lennard Joel Kessler, appellant's obstetrics expert, testified that immediate induction of labor was necessary based, in part, on Mrs. Lopez's 84 percent oxygen saturation level.

⁷ The defense presented evidence, including the testimony of the respiratory therapist, that indicated Mrs. Lopez received oxygen only intermittently.

C. Dr. Frankel's Testimony

1. Deposition Testimony

Dr. Erwin Frankel was the defense obstetrics expert. During his deposition, Dr. Frankel expressed two general opinions. First, he opined that “Dr. Turull practiced according to the standard of care.” This opinion was, according to Dr. Frankel, based on the Hospital records, the San Gabriel Valley Perinatal Medical Group, Inc. records, Dr. Turull’s records and the depositions of the witnesses. Dr. Frankel was asked what facts he relied on to come to his conclusion. He responded: “[R]eview of the antepartum records, both from Dr. Turull and from the San Gabriel Perinatal Group, led me to believe that Dr. Turull did practice within the standard of care for obstetricians”⁸ Specifically asked about Mrs. Lopez’s initial oxygen saturation level of 84 percent when she was admitted to the Hospital on April 11th, Dr. Frankel said that Dr. Turull was not required to obtain a pulmonary consultation or listen to Mrs. Lopez’s lungs as a result of that measurement, because Mrs. Lopez’s symptoms indicated a simple case of an upper respiratory infection. Dr. Frankel further stated that Dr. Turull responded appropriately by ordering continued monitoring of oxygen saturation levels, an oxygen mask and an antibiotic.

Dr. Frankel was asked to describe normal oxygen saturation levels, and stated that Mrs. Lopez’s level should have been around 94 percent. Asked whether

⁸ Later, Dr. Frankel was asked: “Other than just referring generally that you’ve looked at records and that’s the basis for your opinion, are there any other specific facts that you can point to that support your position that [Dr. Turull] behaved [with]in the standard of care?” He responded: “The patient had twins. The patient had preeclampsia of the mild category. [¶] The obstetrician is between a rock and a hard place in this kind of case because, on [the] one hand, if you deliver this patient in order to treat the mild preeclampsia, you now have delivered two small babies with an increased risk of respiratory problems and a prolonged course in the neonatal intensive care unit. [¶] So, therefore, you have to balance a condition of the mother and the conditions of these premature twins. And that’s what I feel Dr. Turull did.”

there were times on April 11th when her oxygen saturation was at or above 94 percent, he replied: “I don’t believe so.”

The second general opinion expressed by Dr. Frankel at his deposition was the opinion that the Hospital’s nursing staff was negligent because, among other things, they failed to alert Dr. Turull at approximately 4:00 p.m., when the fetal monitor began to show heart rate decelerations. Asked to clarify the problem indicated by the fetal monitor strips, Dr. Turull testified that the repetitive decelerations were possibly an indicator of oxygen deprivation and/or a bad reaction to the Pitocin.

During his deposition, Dr. Frankel twice testified that he had formulated his “core opinions,” but that the testimony of appellant’s expert might cause him to alter or add to those opinions.

2. Trial Testimony

During trial, Dr. Frankel testified he had reviewed the twins’ fetal monitor strips, i.e., the printouts from the monitoring devices which continuously measured their heart rates. He testified that if a fetus is in trouble, the heart rate will speed up or slow down, and that changes in the fetal heart rate are “signpost[s]” that should be watched closely. Shown the monitor strips recorded at the time of Mrs. Lopez’s admission to the Hospital, he testified that the strips showed the twins’ heart rates to be normal and that the source of oxygen for the fetus is the mother. Respondent’s attorney then asked the following question: “Theoretically if there is a problem with the mother carrying enough oxygen, [would that] translate eventually to the baby?” Appellant’s counsel interposed an objection on the ground that the subject was “beyond the opinions expressed at the time of the deposition.” Respondent’s counsel contended there was “no closeout of this witness about the opinions he intended to render at trial” The court asked to

review the deposition transcript.⁹ The court and counsel then had an off-the-record discussion. When it ended, the court announced the objection was overruled and that respondent's counsel could continue the line of questioning.¹⁰

Dr. Frankel went on to reiterate that according to the fetal monitor strips, at 12:18 p.m., the twins' heart rates were normal, which meant they were "well oxygenated" when Mrs. Lopez was admitted to the Hospital. He also testified the 84 percent measurement of Mrs. Lopez's oxygen saturation at the time of admission did not require action or treatment other than that ordered by Dr. Turull because it was consistent with a simple upper respiratory infection and was not affecting the twins. Later, during redirect, Dr. Frankel testified that the fetal monitor strips indicated that the twins were not suffering from oxygen deprivation at 3:40 p.m. Counsel asked if there was "an oxygen saturation value [for Mrs.

⁹ Appellant's counsel referred the court to page 41, lines 13 through 21, where Dr. Frankel was asked if there were "[a]ny other opinions that you intend to offer at the time of trial?" Dr. Frankel responded: "Yes, if I see something in your expert's deposition that I . . . disagree with."

¹⁰ After Dr. Frankel's testimony concluded and the jury was dismissed, the court permitted appellant's counsel to put a statement on the record. Counsel stated: "With respect to some of the testimony at the beginning of Dr. Frankel's direct examination, there were questions directed as to the fetal monitoring strips and the significance of them as they relate to the twins, and specifically how it related to . . . the respiratory condition of [Mrs. Lopez]. . . . [I]t is my firm belief that that was beyond the scope of the opinions rendered by Dr. Frankel in his deposition." Referring to Dr. Frankel's statement that he might have additional opinions after seeing those of appellant's expert, counsel stated: "I can represent to the court that there were no such fetal monitoring opinions as part of Dr. Kessler's opinion expressed in his deposition or at trial" Defense counsel responded that the testimony was "not an opinion"; that the subject of fetal monitor strips was raised at Dr. Frankel's deposition and appellant's attorney "made a strategic decision not to follow up"; and that appellant's attorney "never closed [Dr. Frankel] out as to any basis for his opinions in the deposition." The court agreed with defense counsel that the information on the fetal monitor strips was "foundational, not an opinion [of the kind] that [is] rendered by expert witnesses . . ." and, therefore, "it was appropriate to make [the earlier] inquiry."

Lopez] recorded on [the 3:40 p.m. fetal monitor] strip.” Dr. Frankel answered “98 percent” and said that Mrs. Lopez was on “room air” when it was measured.

D. Pertinent Argument

During closing, defense counsel argued that appellant’s theory that Mrs. Lopez was admitted with pulmonary edema which got progressively worse as the day wore on was contradicted by: (1) Dr. Frankel’s testimony concerning the normal heart rates recorded on the fetal monitor strips at the time of admission; (2) Mrs. Lopez’s failure to complain of shortness of breath; (3) Nguyen’s testimony concerning his examination of Mrs. Lopez’s lungs later in the day; (4) the 98 percent oxygen saturation levels recorded at 3:40 p.m.; and (5) the testimony of appellant’s pulmonary expert, Dr. Noble, that once the condition began Mrs. Lopez’s respiratory function would not improve. Defense counsel also argued that the strips helped establish when Mrs. Lopez began to suffer serious oxygen deprivation -- an hour or so before Dr. Turull was called at 5:30 p.m. -- because that was when “those babies’ fetal monitoring strips started to go to the abnormal pattern.”

Criticizing the evidence presented by appellant, defense counsel argued: “Did he ever bring in [a witness to testify concerning] the critical time periods when the oxygen saturations were 98 percent[,] normal, . . . to somehow undercut that evidence? Absolutely not. [¶] Did he bring in an expert or ask Dr. Kessler [appellant’s obstetrics expert] about the fetal monitoring strips that showed the babies’ heart rates were normal for four or five hours, suggesting or indicating indirectly that this mother was well oxygenated up until 4:30 or 5:00 o’clock? Absolutely not. [¶] Did he counter Mr. Nguyen’s testimony that when he came upon this patient . . . she was not in respiratory distress[?] Her breathing rate was within normal limits, her heart was actually lower than it had been earlier in the

day. And there was no evidence from his listening to the . . . breath sounds, of any evidence of pulmonary edema. . . . Do you think if this patient has pulmonary edema when she comes into the hospital, magically at 3:30 in the afternoon or so when Mr. Nguyen . . . listens to her, all of a sudden it's gone away? Of course not. It doesn't come and go. According to Dr. Noble, it gets worse and worse and worse."

E. Verdict and Judgment

By special verdict, the jury found that Dr. Turull was negligent on April 11, but that her negligence was not a substantial factor in causing harm to Mrs. Lopez. Judgment was entered in favor of Dr. Turull. This appeal followed.

DISCUSSION

Appellant contends that the objection to Dr. Frankel's trial testimony as it related to the connection between Mrs. Lopez's oxygen saturation levels and the information on the fetal monitor strips should have been sustained.¹¹ We conclude

¹¹ We note that appellant's brief does not accurately describe Dr. Frankel's testimony in this regard. The brief contends that Dr. Frankel testified that Mrs. Lopez had a blood oxygen saturation level of 98 percent when she was first admitted to the Hospital and a similar saturation level at 3:40 p.m. As we have discussed, Dr. Frankel testified that the fetal monitor strips indicated that the twins' heart rates were normal shortly after Mrs. Lopez was admitted and at 3:40 p.m. The normal heart rates created an inference of a lack of respiratory distress in the twins, but did not indicate a particular oxygen saturation level in their mother. The 98 percent saturation level mentioned in Dr. Frankel's testimony came from a direct measurement of Mrs. Lopez's oxygen saturation level taken by a different device and written on one of the strips, as several witnesses attested. Appellant's counsel did not object when Dr. Frankel was asked to read to the jury the notation on the fetal monitor strip which showed an oxygen saturation reading for Mrs. Lopez of 98 percent at 3:40 p.m., and therefore, cannot raise an issue concerning this testimony on appeal. (Evid. Code, § 353, subd. (a).) Moreover, numerous witnesses, including appellant's own pulmonary expert, Dr. Noble, testified to Mrs. Lopez's 98 percent oxygen saturation level at 3:40 p.m.

the court properly overruled the objection, and that even assuming admission of the testimony was error, it was harmless.

A. Dr. Frankel's Testimony Concerning the Significance of the Fetal Monitor Strips Was Not Foreclosed by the Opinions Expressed at His Deposition

Code of Civil Procedure section 2034.210 permits any party to a litigation to demand an exchange of declarations of experts whose opinions another party expects to offer at trial. An expert declaration should include “[a] brief narrative statement of the general substance of the testimony that the expert is expected to give” and “[a] representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinion and its basis, that the expert is expected to give at trial.” (Code Civ. Proc., § 2034.260, subds. (c)(2) and (4).)

In *Jones v. Moore* (2000) 80 Cal.App.4th 557 (*Jones*), this court explained that the purpose of this language (at that time, found in former section 2034) “is to permit parties to adequately prepare to meet the opposing expert opinions that will be offered at trial. “[T]he need for pretrial discovery is greater with respect to expert witnesses than it is for ordinary fact witnesses [because] . . . [¶] . . . the other parties must prepare to cope with witnesses possessed of specialized knowledge in some scientific or technical field. They must gear up to cross-examine them effectively, and they must marshal the evidence to rebut their opinions.” (1 Hogan & Weber, Cal. Civil Discovery (1997) Expert Witness Disclosure, § 10.1, p. 525.)’ [Citation.]” (*Jones, supra*, 80 Cal.App.4th at p. 565, quoting *Bonds v. Roy* (1999) 20 Cal.4th 140, 147.)

In *Jones*, we held that a legal malpractice expert who testified at his deposition that the defendant’s conduct fell below the standard of care only when

he advised the plaintiff to accept a settlement from her ex-husband which included an inadequately-secured note could not testify over objection at trial that the defendant's conduct also fell below the standard of care when he later attempted to obtain substitute security. (*Jones, supra*, 80 Cal.App.4th at pp. 563-564.) We said: "When an expert deponent testifies as to specific opinions and affirmatively states those are the only opinions he intends to offer at trial, it would be grossly unfair and prejudicial to permit the expert to offer additional opinions at trial." (*Id.* at p. 565.)

In *Jones*, we further held that it was *not* error to permit the family law expert to testify over objection that the ex-husband's pension plan could not be used for security because "[w]hether the pension plan should be joined or was available as security was within the general ambit of whether defendant breached the [family law practitioner] standard of care." (*Jones, supra*, 80 Cal.App.4th at p. 566.) Division Two reached a similar conclusion in *DePalma v. Rodriquez* (2007) 151 Cal.App.4th 159, a case involving alleged injuries arising from an automobile accident, where the biomechanic expert testified at his deposition that based on the force of the impact on the plaintiff's vehicle, he would not have expected the plaintiff to have suffered "any" injury. (*Id.* at p. 162.) At trial, the same expert testified specifically concerning the possibility of injury to the plaintiff's knee and shoulder. (*Ibid.*) The court stated: "[T]he instant case is quite different from the situation [of the legal malpractice expert] in *Jones*, where testimony excluded by the trial court involved an entirely new area of testimony not previously disclosed. Here, [the expert's] trial testimony constituted merely an expanded description and interpretation of the conclusions stated in his deposition testimony." (*DePalma v. Rodriquez, supra*, 151 Cal.App.4th at p. 165.)

Resolution of the issue presented here turns on whether Dr. Frankel's trial testimony concerning the significance of the fetal monitor strips and the twins'

heart rates represented an “additional opinion[.]” (*Jones, supra*, 80 Cal.App.4th at p. 565) involving “an entirely new area of testimony not previously disclosed” (*DePalma v. Rodriguez, supra*, 151 Cal.App.4th at p. 165) or whether it was “within the general ambit” of the opinions expressed at his deposition (*Jones, supra*, at p. 566) and “constituted merely an expanded description and interpretation of the conclusions stated [there]” (*DePalma, supra*, at p. 165). Initially, we note that with respect to the specific question to which appellant objected -- “Theoretically if there is a problem with the mother carrying enough oxygen, [would that] translate eventually to the baby?” -- Dr. Frankel did not answer that question. After the unrecorded bench conference, Dr. Frankel testified that the fetal monitor strips indicated that the twins were doing well when Mrs. Lopez arrived at the Hospital and that this supported Dr. Turull’s decision to treat Mrs. Lopez’s respiratory symptoms as bronchitis or an upper respiratory infection by ordering antibiotics and a short course of oxygen, plus continued monitoring of oxygenation levels. Defense counsel did not repeat the question posed prior to the objection.

Second, appellant’s counsel did not object to Dr. Frankel’s testimony that the source of oxygen for the fetus was the mother. It required no leap of imagination to infer that inadequate oxygenation of the twins could be an indication of pulmonary distress in the mother and vice versa. Thus the jury was aware, from testimony admitted without objection, that the mother provided the oxygen to the twins, that they were sufficiently oxygenated upon her admission and that later in the day, the fetal monitor strips indicated they were insufficiently oxygenated.

Finally, it cannot be said that the relationship of the twins’ oxygenation to the mother’s pulmonary health was “an entirely new area of testimony not previously disclosed.” As noted above, Dr. Frankel testified at his deposition that

decelerations in the twins' heart rates shown on the fetal monitor strips at 4 p.m. indicated oxygen deprivation, and that this should have alerted the Hospital staff to call Dr. Turull. Appellant's counsel never followed up by seeking to clarify Dr. Frankel's views on the significance of the twins' declining oxygen levels to the mother's pulmonary health, but moved on to another topic. The rules governing expert witness discovery and our decision in *Jones* were meant to protect counsel from unfair surprise, not willful failure to explore an expert's opinion. Based on the opinions expressed by Dr. Frankel at his deposition, the subject matter of fetal monitor strips and their relation to the health of Mrs. Lopez was a fair topic for inquiry at trial.

B. Dr. Frankel's Testimony Concerning the Significance of the Fetal Monitor Strips Was Cumulative of Other Testimony Which Established That Mrs. Lopez Was Not Suffering Pulmonary Edema at the Time of Admission to the Hospital.

Even were we to assume that admission of the testimony concerning the significance of the fetal monitor strips and the twins' heart rates was error, it was harmless. (Evid. Code, § 353, subd. (b); see, e.g., *Huffman v. Interstate Brands Corp.* (2004) 121 Cal.App.4th 679, 692 ["In civil cases, a miscarriage of justice should be declared only when the reviewing court, after an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error."].) To the extent Dr. Frankel's testimony tended to show that Dr. Turull met the appropriate standard of care in her examination and treatment of Mrs. Lopez, the jury rejected that position, finding in the special verdict that Dr. Turull was negligent. To the extent the testimony tended to establish lack of causation -- by showing that as Mrs. Lopez was not suffering from pulmonary

edema at noon, Dr. Turull's failure to examine her lungs was not a contributing factor in her death -- it was cumulative. Other evidence demonstrated that Mrs. Lopez did not have fluid in her lungs when she was admitted to the Hospital and examined by Dr. Turull. For example, the defense presented evidence that Mrs. Lopez did not complain of shortness of breath at the time of admission and that her blood oxygen saturation levels were normal or nearly normal at 1:30 p.m. and 3:40 p.m. The experts were in agreement that shortness of breath accompanies pulmonary edema and that once the condition began, the patient's oxygen saturation level would not improve on its own over time. Moreover, Nguyen, the respiratory therapist, testified that he heard no fluid in Mrs. Lopez's lungs when he examined her in connection with the respiratory treatment at 3:15 p.m., and that her vital signs were within normal parameters. As defense counsel pointed out in closing, appellant presented nothing to contradict either the evidence that Mrs. Lopez's oxygen saturation levels were normal later in the day, or Nguyen's testimony concerning the lack of fluid in her lungs at 3:15 p.m. Accordingly, we believe the jury's conclusion would have been the same even if Dr. Frankel had not testified concerning the inferences to be drawn from the fetal monitor strips and the twins' heart rates.¹²

¹² Appellant's states in the introduction of his brief that the trial court erred when it sustained objections during his counsel's attempt to "cross-examine one of [Dr. Turull's] expert witness[es] relating [to] an 88% oxygenation reading which was recorded shortly before the reported 98% reading at 3:[40] P.M." Appellant does not identify the pages in the record at which this occurred and raises no further argument concerning this alleged error. As a party must support contentions with argument and appropriate citations to the record, appellant has forfeited his challenge to this evidentiary ruling. (See, e.g., Evid. Code, § 353, subd. (a); *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 690, fn. 18; *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 798.) Moreover, assuming appellant is referring to his counsel's attempt to cross-examine the defense pulmonary expert, Dr. Wachtel, concerning certain notations on the fetal monitor strips, Dr. Wachtel testified he had not reviewed the strips and did not

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.

derive his information concerning Mrs. Lopez's oxygen saturation levels from the strips. Accordingly, the defense objection to counsel's attempt to cross-examine Dr. Wachtel concerning information found on the strips was properly sustained.